

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Rulemaking to implement the provisions of  
Public Utilities Code § 761.3 enacted by  
Chapter 19 of the 2001-02 Second Extraordinary  
Legislative Session.

Rulemaking 02-11-039  
(Filed November 21, 2002)

**ADMINISTRATIVE LAW JUDGE'S RULING  
REOPENING PHASE 1 OF PROCEEDING; NOTICE OF AVAILABILITY OF  
PROPOSED GENERAL ORDER; AND OPPORTUNITY TO COMMENT**

Phase 1 of this proceeding, concerning the enforcement of maintenance standards, was stayed, pending further order, on April 9, 2003. Phase 1 of the proceeding is now reopened.

Commission staff has developed a proposed General Order that, once adopted, will enable the Commission to enforce the standards and other requirements adopted pursuant to SBX2 39, codified at Pub. Util. Code § 761.3. The proposed General Order is set forth as Appendix A. Comments and responding comments may be filed with the Commission as indicated below.

In developing the proposed General Order, Commission staff has considered the recommendations of the California Electricity Generation Facilities Standards Committee (Committee), the respondents' comments filed earlier in this proceeding, the Commission's prior enforcement experience in all its regulatory areas, and enforcement programs administered under other state and federal laws. Since the Committee determined that sections 2-5 of the maintenance standards are suggested methods of implementation and

enforcement, they have been considered as suggestions to the Commission. The approach taken in this proposed General Order is to begin the implementation of the standards and requirements adopted by the Committee. The Commission will continue to develop and consider more detailed implementation methods, including the possible submission of maintenance plans and Commission review of those plans.

The proposed General Order provides a unified method to implement and enforce the various sets of standards adopted by the Committee and filed (or to be filed) with the Commission: General Duty Standards, Maintenance Standards, Logbook Standards (thermal and hydropower), and Operational Standards.

When the General Order is finally approved, the Commission may have already adopted decisions implementing individual sets of standards, such as the Thermal Logbook Standards. If this is the case, the Commission's decision adopting the General Order also will authorize the incorporation of those standards into the General Order (*see, e.g.*, Appendices A and B which are reserved for this purpose).

Similarly, the Committee may submit standards to the Commission after approval of the General Order. In this event, the Commission will likely authorize the incorporation and enforcement of those standards under the General Order.

For additional questions about the content of the proposed General Order, please contact: Mark Ziering, Electric Generation Performance Program, CPSD, (415) 703-2233.

**IT IS RULED** that:

1. Proceedings in Phase 1 are reopened.

2. Parties to this proceeding may file written comments on the proposed General Order on or before Monday, October 27, 2003. Other persons, not now parties, may file written comments if they simultaneously move to intervene.

3. Written responding comments may be filed and served on or before Monday, November 3, 2003.

4. All comments will be filed and served pursuant to the Scoping Memo including both email and paper submissions to the Administrative Law Judges.

5. Opening comments will not exceed 30 pages. Responding comments will not exceed ten pages. Parties shall not repeat arguments or comments made earlier in this proceeding; rather, they shall identify the earlier argument or comment, by title and filing date, and incorporate it by reference. Comments concerning the jurisdiction of the Commission to enforce any of these standards will be limited to five pages. Comments on specific provisions of the proposed General Order will include the section number (*e.g.*, “Comment on subsection 10.2.4: \_\_”) and be arranged in numeric order.

Dated October 2, 2003, at San Francisco, California.

/s/ JOHN THORSON  
\_\_\_\_\_  
John Thorson  
Administrative Law Judge

## Appendix A

### Public Utilities Commission of the State of California

General Order No. \_\_\_\_

#### Enforcement of Maintenance and Operational Standards for Electric Generating Facilities

Adopted \_\_\_\_, 2003. Effective \_\_\_\_, 2003.  
(D.03-\_\_-\_\_ in R.02-11-39)

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#### 1.0 PURPOSE

The purpose of this General Order is to implement and enforce standards for the maintenance and operation of electric generating facilities and power plants so as to maintain and protect the public health and safety of California residents and businesses, and to ensure electrical service reliability and adequacy. The General Order provides a continuing method to implement and enforce General Duty Standards, Generation Maintenance Standards (Maintenance Standards), and Generation Operational Standards all adopted pursuant to Public Utilities Code § 761.3 (Chapter 19 of the Second Extraordinary Session of 2001-02 (SBX2 39, Burton *et al.*). The General Order also provides a means to enforce the protocols for the scheduling of power plant outages of the California Independent System Operator. The General Order is based on the authority vested in the California Public Utilities Commission by the California Constitution; California statutes

and court decisions; prior Commission decisions and orders; and federal law including, but not limited to, section 714 of the Energy Power Act of 1992, 16 U.S.C. § 824(g).

## **2.0 DEFINITIONS/ACRONYMS**

- 2.1 “Active Service” means the status of an electric generating unit that is interconnected and is capable of operating in parallel with the electricity grid.
- 2.2 “California Independent System Operator” or “ISO” is that nonprofit public benefit corporation authorized under Public Utilities Code § 345 *et seq.* to operate California’s wholesale power grid.
- 2.3 “Commission” means the California Public Utilities Commission.
- 2.4 “Committee” means the California Electricity Generation Facilities Standards Committee, formed pursuant to Public Utilities Code § 761.3(b).
- 2.5 “Consumer Protection and Safety Division” or “CPSD” means that division of the Commission, or any successor entity, designated by the Commission to enforce this General Order.
- 2.6 “Exigent circumstance” means any condition related to the operation and maintenance of a Generating Asset that may result in imminent danger to public health or safety, including but not limited to electrical service reliability or adequacy, or to persons in the proximity of a Generating Asset.
- 2.7 “General Duty Standards” means the General Duty Standards for Operation and Maintenance, adopted by the Committee on June 3, 2003, and set forth as Attachment A to Committee Resolution No. 3, which was filed with the Commission on June 6, 2003. This initial set of General Duty Standards is set forth in Appendix A to this General Order. “General Duty Standards” also includes any subsequent amendments or revisions to those standards
- 2.8 “Generating Asset” means any device owned by an electrical corporation (as that term is defined in Public Utilities Code § 218) or located in the State of California used for the generation of electric energy. To be a Generating Asset, the device must have a metered output, or an administratively defined group of generating devices that may or may not have individual metered outputs, but are aggregated for performance measurement. *However*, for the purposes of this General Order, a Generating Asset does not include:
  - 2.8.1 A nuclear powered generating facility, *provided* that the owner or operator of such a facility shall comply with the reporting requirements of Public Utilities Code § 761.3(d).

- 2.8.2 A qualifying small power production facility or a qualifying cogeneration facility within the meaning of sections 201 and 210 of Title 11 of the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. §§ 796(17), 796(18) & 824a-3) and the regulations adopted pursuant to those sections by the Federal Energy Regulatory Commission (18 C.F.R. §§ 292.101 to –602, inclusive), *provided* that an electrical corporation that has a contract with a qualifying small power production facility, or a qualifying cogeneration facility, with a name plate rating of 10 megawatts or greater, shall comply with the reporting requirements of Public Utilities Code § 761.3(d)(2)(B).
- 2.9 “Generating Asset Owner” means any person or entity owning, controlling, operating, or managing a Generating Asset. “Generating Asset Owner” includes, but is not limited to, an electrical corporation (as that term is defined in Public Utilities Code § 218). “Generating Asset Owner” includes the officers, agents, employees, affiliates, subsidiaries, contractors, and Scheduling Coordinators of the Generating Asset Owner. “Generating Asset Owner” does not include any governmental agency.
- 2.10 “Generating Availability Data System” or “GADS” means that data base system maintained by the North American Electric Reliability Council (NERC) which collects, records, and retrieves operating information for improving the performance of electric generating equipment.
- 2.11 “Generator Logbook Standards (Hydro)” [Reserved].
- 2.12 “Generator Logbook Standards (Thermal Energy)” means the “Electricity Generating Facility Logbook Standards for Thermal Power Plants,” adopted by the Committee on April 1, 2003, and filed with the Commission on April 2, 2003. The Generator Logbook Standards (Thermal Energy) are set forth as Appendix B to this General Order. “Generator Logbook Standards” also includes any subsequent amendments or revisions to those standards.
- 2.13 “Generator Maintenance Standards” means section 1 of the “Maintenance Standards for Generators with Suggested Implementation and Enforcement Model,” adopted by the Committee on May 2, 2003, and filed with the Commission on May 16, 2003. The Generator Maintenance Standards are set forth as Appendix C to this General Order. “Generator Maintenance Standards” also includes any subsequent amendments or revisions to those standards.

- 2.14 “Generator Operational Standards” [Reserved].
- 2.15 “Material Change” means a deliberate or unintended alteration of the characteristics of a Generating Asset; the operation of that asset; or the operations, maintenance or corrective plan pertaining to that asset when that alteration could reasonably be expected to improve or degrade the reliability, output, or performance of the asset.
- 2.16 “NERC” means the North American Electric Reliability Council or any successor thereto.
- 2.17 “Notify CPSD,” “file with the Commission,” “filing,” or “file” means (unless otherwise indicated) to send a written communication by the U.S. Mail or a more expeditious express mail service to the Consumer Protection and Safety Division, Electric Generation Performance Program, at the address specified in subsection 15.2 of this General Order.
- 2.18 “Outage Coordination Protocol” means that document set forth as sheets 509-535 (effective October 13, 2000) in the ISO tariff to coordinate schedules for maintenance, repair and construction of generating units, sections of the ISO controlled grid, and interconnections, as well as any subsequent amendments to the document.
- 2.19 “Scheduling Coordinator” means an entity certified by ISO for the purpose of undertaking the scheduling, delivery, payment, and other functions specified in section 2.2.6 of the ISO tariff.
- 2.20 “Scheduling Logging for the ISO of California” or “SLIC” is a procedure used by the ISO for scheduling of generator outages.
- 2.21 “Standards” is a collective term including all the individual standards enforced pursuant to this General Order: General Duty Standards, Generating Logbook Standards (Hydro), Generating Logbook Standards (Thermal Energy), Generator Maintenance Standards, and Generator Operational Standards. “Standards” also includes the obligation of Generating Asset Owners to comply with the Outage Coordination Protocols of the ISO, as set forth in subsection 9.1 of this General Order.
- 2.22 “Thermal Energy” includes but is not limited to heat generated from combustion of fuels, recovery of heat from discharges from a turbine or other device powered by the combustion of fuels, and geothermal energy.

### **3.0 REQUIRED COMPLIANCE**

All Generating Asset Owners shall comply with this General Order.

#### **4.0 GENERAL DUTY STANDARDS**

- 4.1 The General Duty Standards are set forth in Appendix A to this General Order, as modified by any subsequent amendments or revisions to those standards.
- 4.2 All Generating Asset Owners shall operate and maintain their Generating Assets in compliance with the General Duty Standards, as modified by any subsequent amendments or revisions to those standards.

#### **5.0 GENERATOR LOGBOOK STANDARDS (THERMAL ENERGY)**

- 5.1 Required Logbooks. Unless exempted by CPSD, all Generating Asset Owners shall maintain facility logbooks for Generating Assets generating electricity by the use of Thermal Energy, as required by the Generator Logbook Standards (Thermal Energy).

#### **6.0 GENERATOR LOGBOOK STANDARDS (HYDRO) [RESERVED]**

#### **7.0 GENERATOR MAINTENANCE STANDARDS**

- 7.1 Applicability of Standards. All Generating Asset Owners shall maintain their Generating Assets in compliance with the Generator Maintenance Standards.
- 7.2 Initial Certification of Maintenance Plans.
  - 7.2.1 Content of Maintenance Plan. A Maintenance Plan is a paper or electronic document that demonstrates how the Generating Asset Owner's ongoing and routine business practices concerning a Generating Asset satisfy the Maintenance Standards enforced under this General Order. The Maintenance Plan may be in the form of a narrative, index, spreadsheet, data base, web site, or other format that, for each of the Maintenance Standards, specifically identifies the procedures and criteria that are utilized to satisfy the applicable standard and assessment guidelines. Existing equipment manuals, checklists, warranty requirements, and other documents may be identified for this purpose; but, if any of these documents are contradictory, the Maintenance Plan will resolve the contradiction.
  - 7.2.2 Certificate of Compliance. For each Generating Asset, the Generating Asset Owner shall certify to CPSD that it has adopted and is implementing a Maintenance Plan that complies with the Generator Maintenance Standards.



- 7.2.3 Certificate of Noncompliance. If a Generating Asset Owner is unable to so certify as required by subsection 7.2.2, the Generating Asset Owner shall certify to CPSD that it has (a) identified and documented the deficiencies in its maintenance practices; and (b) adopted a Corrective Plan that is reasonably designed to achieve compliance with the Generator Maintenance Standards within 180 days of the certification. The Corrective Plan will document how the Generating Asset Owner's ongoing and routine business practices concerning a Generating Asset do not satisfy the Maintenance Standards, the procedures and criteria that must be developed to satisfy the Maintenance Standards, the persons or entities responsible for addressing the deficient procedures or criteria, and a timetable for achieving compliance with the Maintenance Standards.
- 7.2.4 Time of Filing. For each Generating Asset in Active Service on the effective date of this General Order, the Generating Asset Owner shall file the Initial Certification within 90 days of the effective date of this General Order.
- 7.2.5 Time of Filing for Other Assets. For each Generating Asset placed in Active Service after the effective date of this General Order, the Generating Asset Owner shall file the Initial Certification within 90 days of the Generating Asset being placed in Active Service. When a Generating Asset Owner acquires a Generating Asset from an existing Generating Asset Owner, the new owner shall file its Initial Certification within 90 days of the effective date of the transfer of title or within 90 days of the transfer of possession, whichever date is later.
- 7.3 Recertification of Maintenance Plans.
- 7.3.1 Method of Recertification. For each Generating Asset, the Generating Asset Owner shall recertify to CPSD the information required by subsection 7.2.2 of this General Order. At the time of recertification, the Generating Asset Owner shall also describe any major changes in its maintenance or corrective plans that have not been previously described to CPSD. If a Generating Asset Owner is unable to recertify that its maintenance plan complies with the Generator Maintenance Standards, the Generating Asset Owner shall comply with subsection 7.2.3 of this General Order.
- 7.3.2 Time for Recertification. For each Generating Asset, the Generating Asset Owner shall file the Recertification on or before the last business day in June following the first full calendar year since the Initial Certification of that Generating Asset. Subsequent

Recertifications will be filed on the last business day in June every two years thereafter.

7.4 Maintenance and Corrective Plan Availability. The current Maintenance and Corrective Plan for each Generating Asset will be available in the vicinity of each Generating Asset or, in the case of a plant or facility with multiple Generating Assets, in the central business office located at that plant or facility. Upon CPSD's request, a Generating Asset Owner shall submit the current Maintenance or Corrective Plan to CPSD in the manner specified in subsection 15.2 of this General Order.

7.5 Exemption. Generating Assets with a name plate rating of less than 10 megawatts are exempt from subsections 7.2, 7.3, and 7.4 of this section 7.0. CPSD may exempt other Generating Assets from subsections 7.2, 7.3, or 7.4 based on technology, megawatt capacity, ownership, or other factors relevant to the purposes of this General Order.

## **8.0 GENERATOR OPERATIONAL STANDARDS [RESERVED]**

## **9.0 INDEPENDENT SYSTEM OPERATOR (ISO) OUTAGE COORDINATION PROTOCOLS**

9.1 Compliance. All Generating Asset Owners shall comply with the Outage Coordination Protocols adopted by the California Independent System Operator.

## **10.0 INFORMATION REQUIREMENTS**

10.1 Provision of Information. Upon CPSD's request, a Generating Asset Owner shall provide information in writing concerning (a) a Generating Asset; (b) the operation or maintenance of the Generating Asset; (c) the, Initial Certification, Recertification, Corrective Plan, or Notice of Material Change pertaining to the Generating Asset; (d) any maintenance, operational, or corrective plans pertaining to the Generating Asset; (e) the design, performance, or history of a Generating Asset; (f) event or outage data concerning a Generating Asset including, but not limited to, unavailability reports or outage cause reports; and (g) any other documents or materials reasonably related to the requirements of this General Order. If CPSD has indicated when, where, and in what form the information is to be provided, the Generating Asset Owner will provide the information in that manner. Except for an exigent circumstance, a minimum of five business days will be provided for the response. If CPSD determines the existence of an exigent circumstance, CPSD may establish a shorter response period for information reasonably required for CPSD to understand or respond to the exigent circumstance.

- 10.2 Authorization for Release of Information. Upon CPSD's request, a Generating Asset Owner shall authorize NERC, ISO, the California Division of Occupational Safety and Health, other governmental agencies, or other persons or entities to release and provide directly to CPSD any information in the possession of that agency or person regarding the operation or maintenance of that Generating Asset Owner's Generating Asset.
- 10.3 Generating Asset Information. A Generating Asset Owner's obligations to provide or authorize the release of information specified in subsections 10.1 and 10.2 include, but are not limited, by the following specific requirements concerning Generating Assets:
  - 10.3.1 Monthly Report to ISO. As required by Public Utilities Code § 761.3(g), each Generating Asset Owner owning or operating a Generating Asset in California with a rated maximum capacity of 10 megawatts or greater shall provide a monthly report to the ISO that identifies any periods during the preceding month when the unit was unavailable to produce electricity or was available only at reduced capacity. The report will include the reasons for any such unscheduled unavailability or reduced capacity.
  - 10.3.2 Submission of Information to NERC. Each Generating Asset Owner shall submit generator design, performance, and event data to NERC for inclusion in GADS. If requested by CPSD, a Generating Asset Owner shall concurrently provide CPSD with a copy of all data submitted to NERC for inclusion in GADS.
  - 10.3.3 Transitional Compliance Period. If upon the effective date of this General Order, a Generating Asset Owner is not submitting generator design, performance, or event data concerning a Generating Asset on a regular basis to NERC for inclusion in GADS, the Generating Asset Owner shall do so within 180 days of the effective date of this General Order. Upon CPSD's request, the Generating Asset Owner shall provide comparable data directly to CPSD until the Generating Asset Owner begins to submit that information to NERC and the information becomes available to CPSD.
  - 10.3.4 Frequency of Information. Upon CPSD's request, a Generating Asset Owner shall submit GADS information directly to CPSD at times and intervals different from when information is submitted to NERC.
- 10.4 Provision of Information to ISO. Generating Asset Owners shall comply with all reporting requirements of the California Independent System Operator for power plant outage coordination.

- 10.5 Books, Accounts, Papers, and Other Documents. In enforcing the provisions of this General Order, CPSD may require the production and inspection of any accounts, books, contracts, memoranda, papers, records, inspection reports of government agencies or other persons, or other documents of any Generating Asset Owner. The Generating Asset Owner shall cooperate with CPSD in the provision of requested books, accounts, and other documents.
- 10.6 Safety-related Incidents. A Generating Asset Owner shall report to CPSD any incident involving a Generating Asset that has resulted in death to a person, an injury or illness to a person requiring overnight hospitalization, damage to the property of the Generating Asset Owner or another person of more than \$20,000, or significant media coverage. The report will be submitted within five business days of the incident. The report will be in writing and will include copies of any reports concerning the incident that have been submitted to other governmental agencies.

## **11.0 AUDITS, INSPECTIONS, AND INVESTIGATIONS**

- 11.1 General Requirement. A Generating Asset Owner shall cooperate with CPSD during any audit, inspection (including tests and technical evaluations), or investigation. An audit, inspection, or investigation may extend to any records pertaining to the specifications, warranties, logbooks, operations, or maintenance of the Generating Asset. Generating Asset Owners, as entities subject to ongoing regulation under this General Order, are hereby notified that these audits, inspections, or investigations will occur on a regular basis supplemented as needed by additional audits, inspections, or investigations to ensure compliance with this General Order.
- 11.2 Interviews and Testimony. Upon CPSD's request, a Generating Asset Owner shall submit to interviews or provide testimony under oath concerning a Generating Asset, its specifications, warranties, logbooks, operations, or maintenance.
- 11.3 Audits, Tests, and Technical Evaluations. Upon CPSD's request, a Generating Asset Owner shall permit CPSD or CPSD's auditor, consultant, or other expert to conduct tests or technical evaluations of a Generating Asset to provide information reasonably necessary for determining compliance with the Standards enforced by this General Order.
- 11.4 Preservation of Records. A Generating Asset Owner shall retain all records including logbooks, whether in paper or electronic format, concerning the operation and maintenance of a Generating Asset for the entire period that the Generating Asset is in Active Service or remains

available for Active Service, plus three additional years. The Generating Asset Owner shall document and explain any subsequent alterations of the preserved records including any alteration done for routine business purposes.

- 11.5 Third-Party Audits, Tests, or Technical Evaluations. During an audit, test, or technical evaluation conducted under this section 11.0, a Generating Asset Owner may submit, or authorize access to, audits, tests, inspections, or technical evaluations previously performed by government agencies, insurance companies, or other persons or entities. While this third-party information may be relevant to the inquiry, the information may not be sufficient, in and of itself, to demonstrate compliance with the standards. CPSD will determine whether a third-party audit, test, inspection, or technical evaluation is sufficient for the purposes of this section 11.0.

## **12.0 VIOLATIONS**

- 12.1 Violation. A Violation is the failure of a Generating Asset Owner to comply with a requirement of this General Order.
- 12.2 Retaliation. Any reprimand, demotion, fine, transfer, suspension, termination or other detrimental action taken by a Generating Asset Owner against an officer, employee, agent, contractor, subcontractor, or customer of a Generating Asset Owner for reporting a Violation of the Standards, reporting a Violation of this General Order, or providing information during the course of an audit, inspection, or investigation is also a Violation of this General Order.

## **13.0 COMMISSION PROCEEDINGS**

- 13.1 Formal Enforcement Proceedings. In enforcing the provisions of this General Order, the Commission may initiate any formal proceeding authorized by the California Constitution, the Public Utilities Code, other state and federal statutes, court decisions or decrees, the Commission's RULES OF PRACTICE AND PROCEDURE, or prior Commission decisions or rulings.
- 13.2 Other Commission Remedies. In enforcing the provisions of this General Order, the Commission may pursue any other remedy authorized by the California Constitution, the Public Utilities Code, other state or federal statutes, court decisions or decrees, or otherwise by law or in equity.
- 13.3 Imposition of Fines for Specified Violations
- 13.3.1 Specified Violations. For specified Violations of this General Order, CPSD may assess a scheduled fine or, in the alternative, proceed with any remedy otherwise available to CPSD or the

Commission. Scheduled fines may be assessed only for the Violations set forth in subsection 13.3.2 of this General Order. Scheduled fines may be assessed only after the Generating Asset Owner has fully satisfied or performed the requirement of the General Order that resulted in the Violation.

- 13.3.2 Schedule of Fines. The specified Violations and the corresponding fines that may be assessed are set forth in Appendix E to this General Order. The Commission may modify this schedule of fines by resolution.
- 13.3.3 Acceptance of Assessed Fine. A Generating Asset Owner may accept or contest the assessment of a scheduled fine. In the event the Generating Asset Owner accepts the assessment, the Generating Asset Owner shall pay the fine in full within 30 days of the assessment. Fines shall be submitted to CPSD for payment into the State Treasury to the credit of the General Fund.
- 13.3.4 Contest of Assessed Fine. If a Generating Asset Owner contests the assessment of a scheduled fine, the Generating Asset Owner must file its contest within ten days of the assessment. In the event of such a contest, CPSD may withdraw the offer of a scheduled fine and proceed with any remedy otherwise available to the Commission; and, in thereafter sanctioning a Violation, the Commission and CPSD will not be limited by the Schedule of Fines set forth in Appendix E to this General Order.
- 13.4 Other Remedies. The Commission's enforcement of this General Order by informal proceedings, formal proceedings, or other remedies does not bar or affect the remedies otherwise available to other persons or government agencies.

## **14.0 SANCTIONS**

- 14.1 Violation. Pursuant to a formal Commission proceeding instituted under subsection 13.1 of this General Order, the Commission will determine whether a Generating Asset Owner has violated the Standards, this General Order, the Public Utilities Code, or other applicable law.
- 14.2 Punishment of Contempt. If the Commission determines that the Generating Asset Owner has violated Public Utilities Code § 2113, the Commission may punish the contempt in the same manner and to the same extent as contempt is punished by the courts of record in this state. The Commission, other persons, and other government agencies may still pursue any other remedies available to them as against the Generating Asset Owner or other person.

- 14.3 Sanctions. Consistent with prior Commission decisions, the following factors will be considered in determining the sanctions to be imposed against a Generating Asset Owner for violating this General Order:
  - 14.3.1 The diligence and reasonableness demonstrated by the Generating Asset Owner in attempting to prevent a Violation, in detecting a Violation, in disclosing a Violation to CPSD and other requisite government agencies, and in rectifying a Violation.
  - 14.3.2 The seriousness of the Violation in terms of injury, if any, to persons, property, and the integrity of the regulatory process.
  - 14.3.3 The number and seriousness of any prior Violations.
  - 14.3.4 The Generating Asset Owner's financial resources.
- 14.4 Mitigation of Sanctions. The following mitigating factors may be considered in reducing the sanctions that would otherwise be imposed for violating this General Order:
  - 14.4.1 The Generating Asset Owner's demonstrated, substantial compliance with any guidelines issued by the Committee or CPSD concerning the Standards and requirements of this General Order.
  - 14.4.2 Conflicting requirements imposed on the Generating Asset Owner by other governmental agencies; warranty requirements; power contract requirements; or requirements imposed by the California Independent System Operator, NERC, or the Western Electricity Coordinating Council.
  - 14.4.3 Penalties already imposed on the Generating Asset Owner by other governmental agencies, contracts, or other regulatory bodies for the same acts or omissions resulting in Violations of this General Order.
- 14.5 Enhancement of Sanctions. The following enhancing factors may be considered in increasing the sanctions that would otherwise be imposed for violating this General Order:
  - 14.5.1 The Generating Asset Owner's demonstrated, substantial noncompliance with any guidelines issued by the Committee or CPSD concerning the Standards and requirements of this General Order.

- 14.5.2 The Generating Asset Owner's repetitive violations of the Standards, the Public Utilities Code, or this General Order.
- 14.5.3 The Generating Asset Owner's violations of the Standards or this General Order have resulted in the failure to deliver electricity as scheduled by the Independent System Operator or in actual power outages.
- 14.5.4 The Generating Asset Owner's failure to report as required or cooperate with the Commission and CPSD in any investigation, audit, inspection, test, or technical evaluation.
- 14.5.5 The Generating Asset Owner's efforts to impede or frustrate CPSD in the enforcement of this General Order.
- 14.6 Not Applicable to Specified Fines. The factors set forth in subsections 14.3, 14.4, and 14.5 do not apply to those specified Violations, set forth in Appendix E, for which a scheduled fine has been assessed against and accepted by a Generating Asset Owner.

## **15.0 MISCELLANEOUS PROVISIONS**

- 15.1 Notice of Material Change. A Generating Asset Owner shall notify CPSD of (a) any previously unreported deficiency in its operational or maintenance practices; or (b) any correction or amendment to the Initial Certification or Recertification pertaining to a Generating Asset that is required because of a material change in the operation or maintenance of the Generating Asset. The Generating Asset Owner shall file any Notice of Material Change within 30 days of the occurrence of the material change.
- 15.2 Filings and Submissions. All Certifications, Recertifications, Notices, or other submissions of information or data in response to Commission requests and the requirements of this General Order will be filed with the CPSD, Electric Generation Performance Program, at 505 Van Ness Ave., San Francisco, CA 94102. Documents must be received by CPSD on the day they are due. CPSD may also require electronic submissions of all filings that are reasonably created in that format.
- 15.3 Oath, Affirmation or Verification. Each Certification, Recertification, Notice, contest, or other submission of information or data required under this General Order will be under the written oath, affirmation, or verification of a corporate officer of the Generating Asset Owner.



15.4 Confidentiality

15.4.1 Burden of Establishing Privilege. A Generating Asset Owner must accompany any requests for confidential treatment of information with a reference to the specific law prohibiting disclosure, the specific statutory privilege that it believes it holds and could assert against disclosure, or the specific privilege it believes the Commission may and should assert against disclosure. The Generating Asset Owner bears the burden of proving why any particular document, or portion of a document, must or should be withheld from public disclosure.

15.4.2 Confidentiality Claims Requiring Balancing of Interests. If a confidentiality request is based on a privilege or exemption requiring a balancing of interests for and against disclosure, rather than on a statutory prohibition against disclosure or a privilege held by the Generating Asset Owner, the Generating Asset Owner must demonstrate why the public interest in an open process is clearly outweighed by the need to keep the material confidential. A Generating Asset Owner which is a public utility should not cite Public Utilities Code § 583 as a sole basis for the Commission's nondisclosure of information since, as noted in D.91-12-019, § 583 does not create for a utility any privilege that may be asserted against the Commission's disclosure of information or designate any specific types of documents as confidential.

15.4.3 Claims of Conditional Privilege. Where the request is based on a conditional privilege or exemption, rather than a statutory prohibition or a privilege held and asserted by a Generating Asset Owner, the Commission has discretion to assert, or refrain from asserting, the conditional Evidence Code § 1040(b)(2) privilege in a particular case.

15.4.4 Requirements. A Generating Asset Owner desiring confidential treatment of information provided to the Commission shall at a minimum:

15.4.4.1 Specifically indicate the information that the Generating Asset Owner wishes to be kept confidential, clearly marking each page, or portion of a page, for which confidential treatment is requested.

15.4.4.2 Identify the length of time the Generating Asset Owner believes the information should be kept confidential and provide a detailed justification for the proposed length of time. The business sensitivity of information generally

declines over time and the balancing of interests for and against disclosure may change accordingly.

- 15.4.4.3 Identify any specific provision of the law the Generating Asset Owner believes prohibits disclosure of the information for which it seeks confidential treatment and explain in detail the applicability of the law to that information.
- 15.4.4.4 Identify any specific privilege the Generating Asset Owner believes it holds and may assert to prevent disclosure of information and explain in detail the applicability of that law to the information for which confidential treatment is requested. For example, if a Generating Asset Owner asserts that information is subject to a trade secret privilege (Evidence Code § 1060 *et seq.*), the Generating Asset Owner must explain (a) how the information fits the definition of a protectible trade secret (*e.g.*, how the information provides its holder with economic value by virtue of its not being generally known to the public and what steps the utility has taken to maintain the secrecy of the information); and (b) why allowance of the privilege will not tend to conceal fraud or otherwise work injustice.
- 15.4.4.5 Identify any specific privilege the Generating Asset Owner believes the Commission holds and may assert to prevent disclosure of information and explain in detail the applicability of that privilege to the information for which confidential treatment is requested. For example, if the privilege is one that involves a balancing of public interests for and against disclosure, such as the official information privilege in Evidence Code § 1040(b)(2), the Generating Asset Owner must demonstrate that the information at issue falls within the definition of official information and the Commission's disclosure of the information is against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice.
- 15.4.4.6 State whether the Generating Asset Owner would object if the information were disclosed in an aggregated format.
- 15.4.4.7 State whether and how the information is kept confidential by the Generating Asset Owner and whether the information has ever been disclosed to a person other than an employee of the Generating Asset Owner.

- 15.5 Violations of Law. When the Commission obtains any information indicating a possible violation of any federal, state, or local law, the Commission will provide that information to the appropriate government agency; and, even though a claim of confidentiality has been made, the Commission will not maintain the information as confidential.
- 15.6 Compliance with Other Laws. Pursuant to California Public Utilities Code § 761.3(f), enforcement of any Standard will not modify, delay, or abrogate any deadline, standard, rule or regulation that is adopted by a federal, state, or local agency for the purposes of protecting public health or the environment including, but not limited to, any requirements imposed by the California State Air Resources Board, an air pollution control district, or an air quality management district pursuant to Division 26 (commencing with section 39000) of the California Health and Safety Code.
- 15.7 Committee Amendments. The Committee may file any amendment to the Standards, duly adopted by the Committee, with the Commission's Docket Office. The Committee shall serve the amendment on CPSD or its successor. The amendment will become enforceable by the Commission under this General Order on the tenth day following publication of the notice of filing in the Commission's *Daily Calendar* (or successor publication). In its filing of any amendment, the Committee shall reference this General Order and request publication of the notice of the filing in the Commission's *Daily Calendar* (or any successor publication). In the case of any amendments, the Executive Director will make the appropriate revisions to the appendices to this General Order.
- 15.8 Duration of Standards. When the Committee ceases to exist pursuant to Public Utilities Code § 761.3(b)(3), the Standards, as on file with the Commission on the date the Committee ceases to exist, will remain effective and enforceable by the Commission under this General Order. The Commission thereafter may amend and enforce the Standards in exercise of its responsibilities under the California Constitution, the Public Utility Code, and this General Order.
- 15.9 Extension of Time. For good cause shown, a Generating Asset Owner may request the extension of any deadline established in or pursuant to this General Order. The request must be in writing and submitted in advance of the deadline to the CPSD Director (or any successor official), or the Director's designee. Pursuant to the request, the CPSD Director may grant one extension, not to exceed 30 days, if the Director determines that a good and sufficient reason exists for the extension.
- 15.10 Severability. If a court of competent jurisdiction determines that any provision of this General Order is void or unenforceable, the Commission

will continue to enforce the remainder of the General Order without reference to the void or unenforceable provision.

15.11 Effective Date. This General Order is effective today.

**APPENDIX A: GENERAL DUTY STANDARDS**

**APPENDIX B: GENERATOR LOGBOOK STANDARDS (THERMAL ENERGY)**

**APPENDIX C: GENERATOR MAINTENANCE STANDARDS**

**APPENDIX D: GENERATOR OPERATIONAL STANDARDS [RESERVED]**



**APPENDIX E: FINES FOR SPECIFIED VIOLATIONS**

<b>VIOLATION</b>	<b>FINE</b>
Failure to file an Initial Certification, Recertification, or Notice of Material change at the time or in the manner required by this General Order.	\$1,000 per incident <i>plus</i> \$500 per day for the first ten calendar days the filing was late and \$500 for each day thereafter.
Failure to maintain logbooks as required by this General Order.	\$5,000 per incident.
Failure to respond to an Information Requirement set forth in section 10.0 of this General Order.	\$1,000 per incident <i>plus</i> \$500 per day for the first ten calendar days the Information Requirement was not satisfied after being requested and \$1,000 for each day thereafter.
Negligent submission of inaccurate information in response to an information request under section 10.0 of this General Order.	\$2,000 per incident <i>plus</i> \$500 per day for the first ten days the inaccuracy was not corrected and \$1,000 for each day thereafter.
Repeated violation of any requirement listed in this schedule.	200% of the fine that would be imposed for a first-time violation.

**CERTIFICATE OF SERVICE**

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling Reopening Phase 1 of Proceeding; Notice of Availability of Proposed General Order; and Opportunity to Comment on all parties of record in this proceeding or their attorneys of record.

Dated October 2, 2003, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074,

TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.